

12/14/07

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF OHIO

## PROOF OF CLAIM

Name of Debtor

Case Number

Akron Thermal, Limited Partnership

07-51884

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):

United States of America on behalf of EPA

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where notices should be sent:

USDOJ Attn: James Bickett

2 S. Main St. Room 208

Akron, Ohio 44308

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

Telephone number: (330) 375-5716

THIS SPACE IS FOR COURT USE ONLY

Last four digits of account or other number by which creditor identifies debtor:

Check here ☐ replaces if this claim ☐ amends

a previously filed claim, dated: \_\_\_\_\_

## 1. Basis for Claim

☐ Goods sold☐ Personal injury/wrongful death☐ Wages, salaries, and compensation (fill out below)☐ Services performed☐ Taxes

Last four digits of your SS #: \_\_\_\_\_

Unpaid compensation for services performed

☐ Money loaned☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)☒ Other See AttachedFrom \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

## 2. Date debt was incurred:

## 3. If court judgment, date obtained:

4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.

Unsecured Nonpriority Claim \$ attached

☒ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.

## Secured Claim

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

☐ Real Estate☐ Other \_\_\_\_\_☐ Motor Vehicle

Value of Collateral: \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ \_\_\_\_\_

## Unsecured Priority Claim

☐ Check this box if you have an unsecured claim, all or part of which is entitled to priority.

Amount entitled to priority \$ \_\_\_\_\_

Specify the priority of the claim:

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to \$10,950)\* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).☐ Up to \$2,425\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)( ).

\*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

## 5. Total Amount of Claim at Time Case Filed:

\$ attached

(unsecured)

(secured)

(priority)

(total)

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

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7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

11/23/2007

/s James L. Bickett, Assistant United States Attorney

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO

In re:	)	Chapter 11
	)	
AKRON THERMAL, LIMITED	)	Case No. 07-51884
PARTNERSHIP	)	
	)	Judge Marilyn Shea-Stonum
Debtor.	)	
	)	
	)	
	)	

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PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1. This Proof of Claim is filed by the United States at the request of the United States Environmental Protection Agency (U.S. EPA). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim involves violations of the Clean Air Act (the Act), 42 U.S.C. §§ 7401-7671q, and the following provisions under that Act: the New Source Performance Standards for Industrial-Commercial-Institutional Steam Generating Units (NSPS), 40 C.F.R. Part 60, Subpart Db, at § 60.40b-60.49b; the Prevention of Significant Deterioration of Air Quality provisions (PSD), Part C of Title I, at §§ 160-169B of the Act, 42 U.S.C. §§ 7470-7492; the Title V Permit Program in Title V of the Act, Sections 502 and 503, 42 U.S.C. §§ 7661a through 7661f, and the State of Ohio's State Implementation Plan (SIP) provisions for Permits to Install (PTI) New Sources of Pollution at Ohio Administrative

Code (OAC) Rule 3745-31. The violations involve three steam generating boilers located at a district steam heating plant owned by the City of Akron and operated by Akron Thermal, L.P. (Akron Thermal), a Delaware limited partnership.

## 2. Nature of Violations

### 1) Boiler #32 Reactivation

On February 15, 2005, U.S. EPA issued Akron Thermal a Notice of Violation/Finding of Violation (NOV/FOV) citing violations of NSPS, PSD, the Ohio SIP PTI requirements, and Title V permit requirements relating to the reactivation of Boiler #32. The violations cited in the NOV/FOV are described below.

#### a) NSPS

A project to reactivate Boiler #32 in November 1995 by Akron Thermal triggered NSPS "modification" provisions in 40 C.F.R. § 60.14. As a result, Boiler #32 is subject to 40 C.F.R. Part 60, Subpart Db. Since the modification in 1995, Akron Thermal has emitted, and continues to emit into the atmosphere, sulfur dioxide (SO<sub>2</sub>) in excess of 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction), and in excess of 520 ng/J (or 1.2 lb/million Btu) heat input from Boiler #32, in violation of 40 C.F.R. § 60.42b(a). Akron Thermal has emitted, and continues to emit into the atmosphere, nitrogen oxides (NO<sub>x</sub>) in excess of 260 ng/J (0.60 lb/million Btu) heat input from Boiler #32, in violation of 40 C.F.R. § 60.44b(a).

Additionally, Akron Thermal failed to comply with emission monitoring, recordkeeping, and reporting requirements in 40 C.F.R. §§ 60.47b, 60.48b, and 60.49b.

b) PSD

The 1995 Boiler #32 reactivation project conducted by Akron Thermal caused emissions of SO<sub>2</sub>, NO<sub>x</sub>, particulate matter (PM), and carbon monoxide (CO) to increase above the significance level for each pollutant resulting in a "major modification" as defined in 40 C.F.R. § 52.21(b)(2). Akron Thermal violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, and the regulations set forth in 40 C.F.R. § 52.21 and incorporated into the Ohio SIP at 40 C.F.R. § 52.1884, by undertaking this major modification and continuing to operate without (1) obtaining a PSD permit, as required by 40 C.F.R. §§ 52.21(I) and (r)(1); (2) applying best available control technology (BACT) for SO<sub>2</sub>, NO<sub>x</sub>, PM and CO, as required by 40 C.F.R. § 52.21(j); (3) demonstrating that construction or modification would not cause or contribute to air pollution in violation of any national ambient air quality standard or any specified incremental amount, as required by 40 C.F.R. § 52.21(k); (4) performing an analysis of ambient air quality in the area, as required by 40 C.F.R. § 52.21(m); and (5) submitting to EPA or Ohio all information necessary to conduct the analysis or make the necessary

determinations under 40 C.F.R. § 52.21, as required by 40 C.F.R. § 52.21(n).

c) Ohio SIP Permit to Install (PTI) Requirements

Akron Thermal failed to obtain a permit to install from the director of the Ohio EPA prior to modifying Boiler #32, in violation of OAC Chapter 3745-31.

d) Title V Permit Requirements

Akron Thermal's Title V permit application was submitted on October 16, 1996. The application did not contain any information about the 1995 reactivation project on Boiler #32, nor did the application contain any information pertaining to the applicability of NSPS and PSD. Therefore, Akron Thermal failed to submit a complete application for a Title V operating permit that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance. Akron Thermal's failure to submit a complete Title V permit application was in violation of Section 503 of the Act, 42 U.S.C. § 7661b, 40 C.F.R. § 70.5(a), and OAC 3745-77-03. Thereafter, Akron Thermal failed to supplement and/or correct its October 16, 1996 Title V permit application with supplementary facts and corrected information, in violation of 40 C.F.R. § 70.5(b) and OAC 3745-77-03(F).

As a result of its failure to provide complete information in its Title V application or to properly supplement its application, Akron Thermal failed to obtain a proper or adequate Title V operating permit for its steam plant that contained emission limitations for NO<sub>x</sub>, SO<sub>2</sub>, PM, and CO, that met BACT, and that met NSPS emission limits. Akron Thermal thereafter operated its steam plant without meeting such limitations and without having a valid operating permit that required compliance with such limitations or that contained a compliance plan for all applicable requirements for which its steam plant was not in compliance. Akron Thermal's conduct violated Section 502(a) of the Act, 42 U.S.C. § 7661a(a), 40 C.F.R. § 70.1(b), and OAC 3745-77-02.

2) Boiler #1 and #2 Stack Tests

On August 19, 2005, U.S. EPA issued Akron Thermal an NOV/FOV citing violations of emission limits and testing requirements in PTI no. 16-02294 and Akron Thermal's Title V permit. These violations were discovered during stack tests conducted in October 2004 and February 2005.

a) Boiler #1

In the October 2004 stack test, Boiler #1 was shown to be emitting in excess of hydrochloric acid (HCl) and sulfuric acid mist emission limits contained in the two permits. In the February 2005 test, Boiler #1 showed compliance with the sulfuric

acid mist limit but continued to emit in excess of the HCl limit. In the August 19, 2005 NOV/FOV, Boiler #1 was cited with a one-time violation of the sulfuric acid mist limit, a continuing violation of the HCl limit, and a continuing violation of the testing requirements.

b) Boiler #2

In the October 2004 stack test, Boiler #2 was shown to be emitting in excess of PM and SO<sub>2</sub> emission limits contained in the two permits. In the February 2005 test, Boiler #2 showed compliance with the PM limit but was shown to be emitting in excess of the HCl limit and continued to emit in excess of the SO<sub>2</sub> limit. In the August 19, 2005 NOV/FOV, Boiler #2 was cited with a one-time violation of the PM limit, a continuing violation of the HCl and SO<sub>2</sub> limits, and a continuing violation of the testing requirements.

3. The debtor is liable to the United States for penalties as set forth below in paragraph 5 and is required to comply with the environmental laws and regulations if it continues to operate as described in paragraph 4.

4. Compliance: The United States is not required to file a proof of claim with respect to Akron Thermal's injunctive obligations to comply with environmental statutes, regulations, and permits because such obligations are not claims under 11 U.S.C. § 101(5). Akron Thermal and any reorganized debtor(s)

must comply with such mandatory requirements. The United States reserves the right to take future actions to enforce any such obligations of Akron Thermal. While the United States believes that its position will be upheld by the Court, the United States has filed this Proof of Claim in a protective fashion with respect to such obligations and requirements, to protect against the possibility that Akron Thermal will contend that it does not need to comply with any such obligations and requirements, and the Court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements, but only in the event that the Court finds that such obligations and requirements are dischargeable claims under 11 U.S.C. § 101(5) rather than obligations and requirements that reorganized Akron Thermal must comply with. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies with respect to such rights and obligations.

5. (Penalties: Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, Akron Thermal is liable for civil penalties payable to the United States of up to \$25,000 per day for each violation occurring before January 30, 1997, \$27,500 per day for each violation

occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day for each violation occurring after March 15, 2004. In determining penalty amounts, courts typically look to the statutory maximum (which in this case is \$451,785,000) and adjust that amount based on factors set forth in the statute (42 U.S.C. § 7413(e)(1)).

6. No judgments against the debtor have been rendered on this Proof of Claim.

7. No payments have been made by the debtor on this claim.


8. This claim reflects the known liability of the debtor to the United States on behalf of U.S. EPA. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This proof of claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

9. The United States has not perfected any security interest on its claim against the debtor.

10. This claim is filed as a general unsecured claim except to the extent that any rights secure the United States' claim, including any secured/trust interest in insurance proceeds received by the debtor on account of environmental claims of the United States, and except to the extent that administrative

expense priority exists with respect to post-petition violations of the law or otherwise. The United States will file any application for administrative expense priority at the appropriate time.

Respectfully submitted,



W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

GREGORY A. WHITE  
United States Attorney  
Northern District of Ohio



JAMES L. BICKETT  
Assistant United States Attorney  
Northern District of Ohio  
2 South Main Street  
Akron, OH 44308  
Telephone: (330) 375-5716  
Facsimile: (330) 375-5492  
E-mail: james.bickett@usdoj.gov

OF COUNSEL:

Catherine Garypie  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

**U.S. Bankruptcy Court**  
**Northern District of Ohio**

Notice of Electronic Claims Filing

The following transaction was received from Bickett, James L. on 12/14/2007 at 11:32 AM EST

**Case Name:** Akron Thermal, Limited Partnership  
**Case Number:** 07-51884-mss  
United States of America, on behalf of EPA  
**Creditor Name:** c/o James L. Bickett  
2 South Main Street, Room 208  
Akron, Ohio 44308  
**Claim Number:** 49 Claims Register  
**Total Amount Claimed:**

The following document(s) are associated with this transaction:

**Document description:**Main Document  
**Original filename:**N:\slowe\akron thermal proof of claim.pdf  
**Electronic document Stamp:**  
[STAMP bkecfStamp\_ID=985901243 [Date=12/14/2007] [FileNumber=19256649-0] [91ec806dcb3b914421727c0e0cffeeb09b599b114c300ee9948d153d417f979b2955765c05a05d5973e3dfc7d334a909d77b84250f2bdf8a79360751b127cd6f]]

**07-51884-mss Notice will be electronically mailed to the U.S. Trustee, and:**

Brent E Baker    BBaker@noklaw.com

Jonathan P Blakely    jblakely@b-wlaw.com

Kate M Bradley    kbradley@brouse.com, tpalcic@brouse.com;ksutton@brouse.com

Tyson A. Crist    tcrist@szd.com

John A Daily    jdaily@dailyandhaskins.com,  
tbuffington@dailyandhaskins.com;sfreeman@dailyandhaskins.com

David G. Finley    david@dfinleylaw.com, denise@dfinleylaw.com

Sidney N Freeman snf52@hotmail.com

Nicole M. Hitch nhitch@brouse.com, tpalcic@brouse.com;ckovach@brouse.com

Thomas R Houlihan Houlihan@amer-law.com

J Bruce Hunsicker jbhunsicker@vssp.com, basanchez@vssp.com

Joseph F. Hutchinson jhutchinson@bakerlaw.com, smaxwell@bakerlaw.com

Kenneth C Johnson kjohnson@bricker.com, lorolin@bricker.com

Trish D. Lazich tlazich@ag.state.oh.us, aseals@ag.state.oh.us

Marc Merklin mmerklin@brouse.com

Christopher J Nickamp cjn@b-wlaw.com

Leo J Puhalla LPuhalla@noklaw.com

Milton C Rankins ProsecutorTax@summitoh.net, mrankins@summitoh.net

John Winship Read jwread@vssp.com, hhroscoe@vssp.com

Donn D Rosenblum drosenblum@ag.state.oh.us

Thomas Saxer tsaxer@amer-law.com

Robert J Sidman rjsidman@vorys.com, cdfricke@vorys.com

Brian K Skidmore bks@skidmorelaw.com

Eric E Skidmore ees@skidmorelaw.com

Robert M Stefancin rstefancin@szd.com

Irving B. Sugerman ibsugerman@goldman-rosen.com, andreag@goldman-rosen.com;bstewart@goldman-rosen.com

Michelle T Sutter msutter@ag.state.oh.us

Daniel R Swetnam dswetnam@szd.com, nchambers@szd.com

Peter G. Tsarnas ptsarnas@goldman-rosen.com, kls@goldman-rosen.com;tsarnasp@hotmail.com;kstone\_56@hotmail.com

Chrysanthe E Vassiles cvassiles@bmsa.com

John C Weisensell jack@b-wlaw.com

Christopher B. Wick cwick@hahnlaw.com, hlpcr@hahnlaw.com

Lenore Kleinman ust04 Lenore.Kleinman@usdoj.gov

**07-51884-mss Notice will not be electronically mailed to:**

Akron Auto & Truck  
c/o John C. Collins  
333 S. Main St #304  
Akron, OH 44308

BMF Financial Advisors, LLC  
Bober, markey, Fedorovich & Company  
3421 Ridgewood Road  
Suite 300  
Akron, OH 44321

Baker & Hostetler LLP  
3200 National City Center  
1900 East Ninth Street  
Cleveland, OH 44114-3485

John Collins  
333 S. Main Street  
Suite 304  
Akron, OH 44308

John C Collins  
333 S. Main Street  
Suite 304

Akron, OH 44308

J. Bruce Hunsicker  
Vorys, Sater, Seymour & Pease LLP  
First National Tower  
106 S Main St  
Akron, OH 44308

Joseph F. Hutchinson  
Baker & Hostetler LLP  
3200 National City Center  
1900 E 9th St  
Cleveland, OH 44114-3485

Kenneth C. Johnson  
Bricker & Eckler LLP  
100 S Third St  
Columbus, OH 43215

Marc B. Merklin  
Brouse McDowell  
388 S. Main St.  
Suite 500  
Akron, OH 44311

Rachel A. Mulchaey  
100 S. 3rd St.  
Columbus, OH 43215

Ohio Edison Company  
c/o Christine M. Weber  
76 S. Main St.  
Akron, OH 44308

Sasco Hill Advisors, Inc.  
Jason F. Fensterstock  
53 Clinton Ave  
Westport, CT 06880

Thomas M Saxer

159 S Main St  
Key Bldg  
Suite 1100  
Akron, OH 44308-1322

Schottenstein, Zox & Dunn Co. LPA  
Daniel R. Swetnam  
250 West St  
Columbus, OH 43215

Archie W. Skidmore  
Skidmore & Associates  
One Cascade Plaza 12th FL  
Akron, OH 44308

Brian K. Skidmore  
Skidmore & Associates  
One Cascade Plaza 12th FL  
Akron, OH 44308

Eric E. Skidmore  
Skidmore & Associates  
One Cascade Plaza 12th FL  
Akron, OH 44308

Thomas A. Skidmore  
Thomas A. Skidmore Co LPA  
One Cascade Plaza-12th Floor  
Akron, OH 44308

Robert M. Stefancin  
Schottenstein, Zox & Dunn Co. LPA  
U S Bank Centre at Playhouse Square  
1350 Euclid Ave #1400  
Cleveland, OH 44115

Thermal Engineering Group, Inc.  
c/o Harry J. Ragsdale  
105 Hazel Path Court Unit #2  
Hendersonville, TN 37075

Christopher B. Wick  
Hahn Loeser & Parks LLP  
200 Public Square #3300  
Cleveland, OH 44114

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